

3:20-mj-00149

STATE OF OREGON)
) ss: AFFIDAVIT OF BRIAN DESENS
County of Multnomah)

Affidavit in Support of a Criminal Complaint and Arrest Warrant

I, Brian Desens, being duly sworn, do hereby depose and state as follows:

Introduction and Agent Background

1. I am employed as a Special Agent (SA) with the Federal Protective Service (FPS) and have been employed by FPS since October 2017. I have participated in several investigations relating to the protection of federal facilities and personnel. I am currently assigned to the FPS Headquarters Rapid Protection Force. I graduated from the Federal Law Enforcement Training Academy (FLETC) Criminal Investigator Training Program in 2018, and FLETC's Uniformed Police Training Program in 2013. I received a bachelor's degree in Law and Justice from Central Washington University in 2015.

2. I submit this affidavit in support of a criminal complaint and arrest warrant for Gretchen Margaret BLANK. As set forth below, I have probable cause to believe that BLANK forcibly assaulted, resisted, impeded, and interfered with federal officers, in violation of 18 U.S.C. § 111(a)(1).

3. The facts set forth in this affidavit are based on the following: my own personal knowledge, knowledge obtained from other individuals during my participation in this investigation, including other law enforcement officers, interviews of witnesses, my review of records related to this investigation, communication with others who have knowledge of the events and circumstances described herein, and information gained through my training and experience. Because this affidavit is submitted for the limited purpose of establishing probable

cause in support of an application for an arrest warrant, it does not set forth each fact that I or others have learned during this investigation.

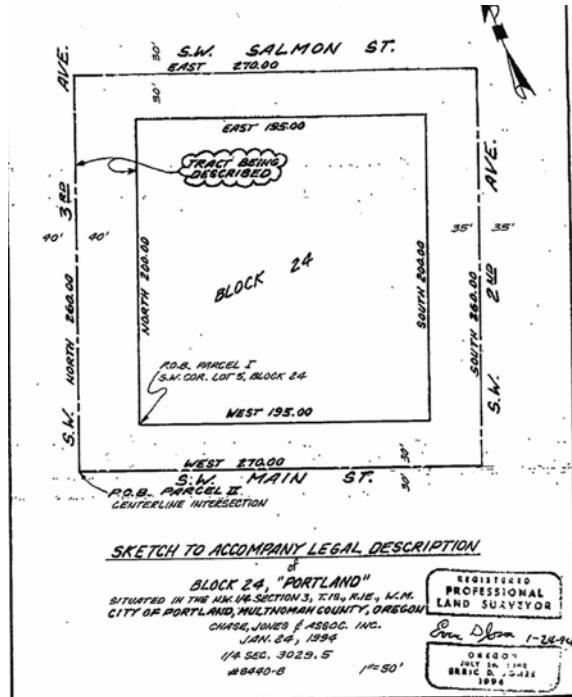
Applicable Law

4. 18 U.S.C. § 111 makes it an offense to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in 18 U.S.C. § 1114 while engaged in or on account of the performance of official duties. Under § 111(a), simple assault is a misdemeanor; an assault involving physical contact with the victim or an intent to commit another felony is a felony. Persons designated in § 1114 include any officer or employee of the United States or of any agency in any branch of the United States government while such officer or employee is engaged in or on account of the performance of official duties, and any person assisting such an officer or employee in the performance of official duties.

Statement of Probable Cause

5. Since on or about May 26, 2020, protesters have gathered in Portland public areas, including Lownsdale Square, Chapman Square, and Terry Schrunk Plaza. The Justice Center, which contains Portland Police Bureau's (PPB) Central Precinct and the Multnomah County Detention Center (MCDC), and the Mark O. Hatfield United States Courthouse, are directly across the street from those parks. The United States of America owns the entire city block (Block #24) occupied by the Hatfield Courthouse, as depicted below.¹

¹ The federal government owns the entire city block occupied by the Mark O. Federal Courthouse. Easements have been granted for the sidewalks surrounding the facility. The property boundary extends past the sidewalks and into the streets surrounding the courthouse.



6. Daily protests have regularly been followed by nightly criminal activity in the form of vandalism, destruction of property, looting, arson, and assault. Most violent of these impacting federal property occurred on May 28, 2020, when the Portland Field Office for the Immigration and Customs Enforcement (ICE) was targeted by a Molotov Cocktail. The Hatfield Courthouse has experienced significant damage to the façade and building fixtures during the six weeks following that incident. Additionally, mounted building security cameras and access control devices have been vandalized or stolen. The most recent repair estimate for the damage at the Hatfield Courthouse exceeds \$50,000, and there has been additional and extensive damage since then. Other federal properties in the area routinely being vandalized include the historic Pioneer Federal Courthouse, the Gus Solomon Courthouse, and the Edith Green Wendall Wyatt Federal Office Building. FPS law enforcement officers, Deputy U.S. Marshals, and other federal law enforcement officers working to protect the Hatfield Courthouse have been subjected to

threats, aerial fireworks (including mortars), high intensity lasers targeting officers' eyes, thrown rocks, bottles, and balloons filled with paint, and vulgar language from demonstrators while performing their duties.

7. On July 5, 2020, at approximately 2:38 a.m., Gretchen BLANK assaulted, obstructed, resisted, impeded, and interfered with FPS and United States Border Patrol (USBP) agents during the performance of their official duties. BLANK assaulted USBP Agent Christopher Smilo with a shield and obstructed, impeded, and interfered with agents who were trying to arrest another individual suspected of assaulting USBP Agent Michael Marino with a laser. These actions contributed to USBP Agent Smilo being pushed off balance and diverted USBP Agent Michael Newborn's attention from the arrest of the original suspect.

8. On July 5, 2020, at approximately 3:00 a.m., Agent Marino told me he was at the corner of SW Third Avenue and SW Salmon Street when he was hit in the chest by a green laser. The laser moved up from his chest into his face, hitting him in the eyes for a moment. The laser was moved to target other officers and agents in the area. Agent Marino saw the person who was using the laser to target him and other officials standing across the street at SW Third and SW Salmon, near a parking entrance garage. Agent Marino saw that person attempting to target other officers with the laser. Agent Marino said the person was lit up by ambient light from either a street lamp or exterior building lighting. Agent Marino pointed the subject out to other agents and broadcast information about the suspect over his radio. Agent Marino saw the suspect tuck back into the parking garage entrance, where he appeared to speak to a woman. The suspect then came out of the garage entrance and walked north on SW Third Avenue towards SW Taylor St. The suspect was taken into custody by an arrest team at SW Third Avenue and

SW Taylor St. During the arrest, Agent Marino saw a woman carrying a shield attempt to run into the arrest team. Both the man and the woman were taken into custody by the arrest team. Agent Marino said the female who attempted to run into the arrest team may have been the same person the man was with at the parking garage entrance.

9. FPS Inspector Brad O'Neal told me that he was part of the team that went to arrest the suspect who pointed the laser at Agent Marino. The suspect saw them coming and began walking north on SW Third toward SW Taylor St. The suspect was taken to the ground at Taylor. While they were arresting him, a woman interfered and was taken into custody as well.

10. USBP Agents Christopher Smilo and Michael Newburn were also part of the team that arrested the suspect. Agent Newburn told me that their team saw the suspect walking north on Third toward SW Taylor St. Agent Smilo attempted to take the suspect into custody. The suspect resisted. Agent Smilo had the suspect's right arm, while Agent Newburn was trying to secure the suspect's left arm, which the suspect tried to keep under his body. While they were trying to secure the suspect, BLANK approached and tried to push Agent Smilo off the suspect using a shield, causing Agent Smilo to lose his balance. BLANK and the suspect were both taken into custody and were taken to the Hatfield Courthouse.

11. At about 3:48 a.m., Agent Miller and I attempted to interview BLANK in the Marshals Service detention facility in the Hatfield Courthouse. BLANK provided basic biographical information such as her name and date of birth, but, after being of her *Miranda* rights, declined to make a statement.

12. During a follow-up interview on July 6, 2020, Agent Smilo told me BLANK hit him in the back with some sort of shield while he was trying to arrest the male suspect, causing

Agent Smilo to lose his balance and collide with Agent Newborn. Agent Smilo described the shield as white in color, shaped like a stop sign, and possibly made of plastic. Agent Smilo said that the male was actively resisting arrest. He and Agent Newburn eventually secured the male. Agent Smilo was not sure who took BLANK into custody.

13. During a follow-up interview on July 6, 2020, Agent Newburn told me that the shield BLANK used to push Agent Smilo may have been diamond shaped and appeared “flimsy.” BLANK hit Agent Smilo in the back with the shield, causing Agent Smilo to fall into Agent Newburn and knock Agent Newburn backwards. The male suspect continued to resist, and it took about 30 to 45 seconds to take him into custody. Agent Newburn was not injured during the arrest, although the male suspect was bleeding from his left elbow.

14. On July 6, 2020, I returned to the Hatfield Courthouse and located what I believe was the shield BLANK used to strike Agent Smilo. The shield was in the front lobby area, by the security screening area. The shield is flat, is white on one side with two black nylon straps, and has a mirrored finish on the opposite side. The shield is octagonal and made mostly of a plastic-type material. I texted pictures of the shield to Agents Smilo and Newburn. Agent Newburn was unable to identify the shield. Agent Smilo confirmed the shield was the one BLANK used to strike him. Photos of the shield appear below.





Conclusion

15. Based on the foregoing, I have probable cause to believe that Gretchen Margaret BLANK forcibly assaulted, impeded, resisted, and interfered with federal law enforcement agents who were performing their official duties, in violation of 18 U.S.C. § 111(a)(1). I therefore request that the Court issue a criminal complaint and arrest warrant charging BLANK with that offense.

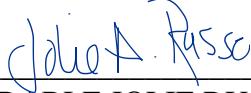
16. Prior to being submitted to the Court, this affidavit, the accompanying complaint, and the arrest warrant were all reviewed by Assistant United States Attorney (AUSA) Gary Sussman. AUSA Sussman advised me that in his opinion, the affidavit and complaint are legally

and factually sufficient to establish probable cause to support the issuance of the requested criminal complaint and arrest warrant.

(By telephone)

Brian Desens
Special Agent
Federal Protective Service

Sworn to by telephone or other reliable means in accordance with Fed. R. Crim. P. 4.1 at
3:03. XX am/pm on July 6, 2020.



HONORABLE JOLIE RUSSO

United States Magistrate Judge